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OFFICE OF PETITIONS

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| In re Application of | : | |
| Matthews et al. | : | DECISION ON PETITION |
| Application Number: 09/663483 | : | TO WITHDRAW HOLDING OF |
| Filing Date: 09/13/2000 | : | ABANDONMENT |
| Attorney Docket Number: FORT- | : | |
| 000600 | : | |

This is a decision on the petition, filed on August 21, 2008, to withdraw the holding of abandonment in the above-identified application.

The application was held abandoned for failure to timely submit a proper and timely reply to the final Office action mailed on October 18, 2007, which set a three (3) month shortened statutory period for reply. On March 18, 2008, an amendment after final rejection and a Notice of Appeal were filed, along with a two (2) month petition for extension of time under 37 CFR 1.136(a). On April 11, 2008, an Advisory Action Before the Filing of an Appeal Brief was mailed, stating that the reply failed to place the application in condition for allowance. A Notice of Abandonment was mailed on June 4, 2008.

Petitioner asserts that the application was held abandoned in error because a Notice of Appeal was timely filed on March 18, 2008, and that an Appeal Brief was timely filed on July 30, 2008, with a three (3) month petition for extension of time.

Petitioners assert that an amendment in response to the non-final Office action was in fact timely filed. In support of the petition, petitioner submitted a copy of a date-stamped post card receipt, dated July 9, 2008, acknowledging receipt of a 19-page amendment, and an extension of time.

Upon review, petitioners' assertion is correct. The Notice of Appeal and two (2) month extension of time filed on March 18, 2008, was a proper and timely response to the final Office action

mailed on October 18, 2007. Furthermore, an Appeal Brief, and a three (3) month petition for extension of time, was timely filed on July 30, 2008, in response to the Notice of Appeal.

Accordingly, there is no abandonment in fact.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is **GRANTED**.

The application file will be referred to Technology Center Art Unit 2146 for Examiner's review of the Appeal Brief.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

A handwritten signature in black ink, appearing to read "D. Wood", is positioned above the typed name.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions